

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

WARNER GOODEN IV,

Plaintiff,

vs.

Civil Action 2:04-CV-174
Judge Frost
Magistrate Judge King

C. SAXOUR, Correctional Officer,
et al.,

Defendants.

REPORT AND RECOMMENDATION

Plaintiff, a state prisoner, brings this action under 42 U.S.C. §1983 alleging, *inter alia*, that defendant Saxour, a corrections officer¹, assaulted plaintiff in contravention of the Eighth and Fourteenth Amendments to the United States Constitution. On February 3, 2005, the fact of defendant Saxour's default was entered, Doc. No. 37, and plaintiff was directed to file a motion for default judgment, with proper evidentiary support. Doc. No. 36. This matter is now before the Court on plaintiff's motion for default judgment. Doc. No. 38.

Plaintiff's motion is supported by his own affidavit in which he seeks judgment in the amount of \$250,000, as well as a copy of the disposition of plaintiff's grievance against defendant Saxour, which confirms defendant Saxour's assault on plaintiff and which notes some minor physical damage to plaintiff. The Court therefore concludes that judgment by default is appropriate, but further concludes that an award of \$10,000.00 will fully compensate plaintiff for his injuries.

¹Defendant Saxour is the only defendant remaining in this action.

It is therefore **RECOMMENDED** that plaintiff's motion for default judgment, Doc. No. 38, be **GRANTED** in part and that plaintiff be awarded default judgment against defendant Saxour in the amount of \$10,000.00.

If any party seeks review by the District Judge of this *Report and Recommendation*, that party may, within ten (10) days, file and serve on all parties objections to the *Report and Recommendation*, specifically designating this *Report and Recommendation*, and the part thereof in question, as well as the basis for objection thereto. 28 U.S.C. §636(b)(1); F.R. Civ. P. 72(b). Response to objections must be filed within ten (10) days after being served with a copy thereof. F.R. Civ. P. 72(b).

The parties are specifically advised that failure to object to the *Report and Recommendation* will result in a waiver of the right to *de novo* review by the District Judge and of the right to appeal the decision of the District Court adopting the *Report and Recommendation*. See *Thomas v. Arn*, 474 U.S. 140 (1985); *Smith v. Detroit Federation of Teachers, Local 231 etc.*, 829 F.2d 1370 (6th Cir. 1987); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

March 29, 2005

s/Norah McCann King
Norah M^cCann King
United States Magistrate Judge